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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,300	12/31/2003	Anindya Banerjee	5760-18600	9800
35690	7590	06/04/2007		
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398			EXAMINER TRUONG, LECHI	
			ART UNIT 2194	PAPER NUMBER
			MAIL DATE 06/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/749,300

Applicant(s)

BANERJEE ET AL.

Examiner

LeChi Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

LeChi Truong
2004/01/22

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 08/22/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-22 are presented for the examination.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 14-20 is rejected as non-statutory because it is not tangibly embodied.

Claims 14, 18, recite "a carrier medium"[line 1]. Carrier mediums are incapable of being touched or perceived absent the tangible medium through which they are conveyed; therefore, claims 14, 18 are non-statutory.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending application serial no: 11,229,965. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because both computer systems comprise substantially the same elements. The differences between claims 1, 12, 14, 18, 21 of this case and the copending application are reply to the second message. It would have been obvious to one of the ordinary skill level in the art to include reply the second message since it was well known at the time of the invention to improve the efficiency for transaction recovery in three-tier application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims **1-22** rejected under 35 U.S.C. 103(a) as being unpatentable over Frolund et al (US 6,434,555 B1) in view of Johnson et al (US 6,338,146 B1).

As to claim 1, Frolund teaches a processor (processor 24, processor 28, col 3, ln 45-50), a client application (client machine 200, col 3, ln 55-60/col 8, ln 24-26/ Fig. 2), transaction (transaction 116, col 3, ln 60-65/ col 8, ln 24-26/ Fig.2), receiving a request from a client application, wherein the request requires a transaction (col 3, ln 60-65/ col 8, ln 24-26/ Fig.2), a first message (a prepare message 422, col 6, ln 8-11), plurality of participant nodes (the databases DB1 404, through DBn 406, col 6, ln 5-10/ database 104, col 4, ln 1-5), in response to the request, sending a first message to a plurality of participant nodes participating in the transaction(col 6, ln 10-14), a reply to the first message(message 424, col 6, ln 10-14), in

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response to receiving a reply to the first message from at least a quorum of the participant nodes(col 6, ln 10-14), a second message(a commit message 426, col 6, ln 12-15), sending a second message to the plurality of participant nodes(col 6, ln 12-15), a replay to the second message(acknowledgement messages 428, col 6, ln 12-16), in response to receiving a reply to the second message from at least a quorum of the participant nodes(col 6, ln 12-18), returning success to the client application(col 16-21), a third message(a forget message 436, col 6, ln 20-26/ a rollback command 548, col 7,ln 13-20), sending a third message to the plurality of participant nodes(col 6, ln 20-16/ col 7, ln 13-20), the third message instructs the participant nodes to commit the transaction(col 7, ln 13-20) .

Frolund does not explicitly teach memory. However, Johnson teaches memory (Shared memory, col 3, ln 10-15).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the teaching of Frolund to incorporate the feature of memory because this provides the incremental unit of expansion for implementing the transaction services.

As to claim 2, Frolund teaches the third message to the plurality of participant nodes comprises sending the third message after said returning success to the client application (col 6, ln 16-26).

As to claim 3, Frolund teaches the first message comprises a message requesting each of the participant nodes to reply by indicating whether they can commit the transaction (col 6, ln 8-12), said receiving the reply to the first message from at least a quorum of the participant nodes comprises receiving a reply indicating an ability to commit the transaction from at least a quorum of the participant nodes (col 6, ln 8-12).

As to claim 4, Frolund teaches the second message comprises a message requesting each of the participant nodes to enter a state indicating that the transaction is to be committed (col 6, ln 12-20); wherein said receiving the reply to the second message from at least a quorum of the participant nodes comprises receiving a reply indicating movement to the state indicating that the transaction is to be committed from at least a quorum of the participant nodes (col 6, ln 12-20).

As to claim 5, Johnson teaches the first message corresponds to a message for a first phase of a three phase commit protocol(col 2, ln 19-22).

As to claim 6, Johnson teaches the second message corresponds to a message for a second phase of a three-phase commit protocol (col 2, ln 12-10).

As to claim 7, Frolund teaches forgetting about the transaction after said sending the third message (col col 4, ln 17-20).

As to claim 8, Frolund teaches the node does not expect a reply to the third message (col 4, ln 17-20/ Fig. 2).

As to claim 9, Frolund teaches each participant node commits the transaction in response to receiving the third message but does not return a reply to the third message (col 4, ln 17-20/ Fig. 2).

As to claim 10, Frolund teaches the request comprises a request to update a file wherein the request requires a transaction to update multiple replicas of the file, wherein each replica is located on a participant node(col 1, ln 19-25/ col 5, ln 35-40).

As to claim 11, Johnson teaches the node is a node in a peer-to-peer network; the peer-to-peer network implements a distributed file sharing system (col 5, ln 59-67 to col 6, ln 1-5).

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As to claims 12-22, they are apparatus claims of claims 1,2, 7-10, 12; therefore, they are rejected for the same reasons as claims 1, 2, 7-10, 12.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LeChi Truong whose telephone number is (571) 272 3767. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomson, William can be reached on (571) 272 3718. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIP. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

LeChi Truong

May 23, 2007


WILLIAM THOMSON
SUPERVISOR
ART UNIT 2194